WP(C) 1507/2007

BEFORE

THE HON'BLE THE CHIEF JUSTICE AND HON'BLE MR JUSTICE T.N.K. SINGH

JUDGMENT AND ORDER(ORAL)

(C.J)

1. These writ petitions raise a common question. In these three writ petitions the petitioners have challenged certain provisions of Assam Medical Colleges (Regulation of Admission to Post Graduate Courses) Rules, 2006. It may not be necessary for us to note the rules are challenged in the present writ petitions.

2. Heard learned counsel for the parties.

3 The petitioners who are working as teachers in the service of the State of Assam Assam Medical College,Dibrugarh would like to make representation highlighting their grievance, which is ventilated by the petitioners in these writ petitions. The decision on such representation however would be within the ambit of the policy decision of the State.

4. We, therefore, direct the respondents to consider the representation as expeditiously as possible, preferably within 2(two) weeks from the date of receipt of the representation. Goes without saying that disposal of the representation be made in accordance with law.

5. In view of the observations made above, the learned counsel appearing for the petitioners did not make any further submission.

6. The writ petitions are accordingly disposed of.

JUDGE CHIEF JUSTICE.

Samir/

IN THE GAUHATI HIGH COURT
THE HIGH COURT OF ASSAM NAGALAND MEGHALAYA MANIPUR TRIPURA MIZORAM AND ARUNACHAL PRADESH

PRESENT
THE HON'BLE MR JUSTICE H.N.SARMA

W.P.(C) No.3169/2001.

1.State of Assam

2.The Secretary to the Govt of Assam
Home(A) Department
Dispur, Guwahati

3.The Director General of Police,Assam
Ulubari, Guwahati 7

4.The Commandant, 9th A.P.Battalion

Abhayapuri Dist. Bongaigaon.
Now shifted to Bongaigaon

Appellants

VERSUS

1.Sri Kalyan Das
S/O Late Khagendra Nath Das
Ward No.IV P.O.Abhayapuri
Dist. Bongaigaon, Assam.

Respondent.

For the Appellants : Mr P.S.Deka,
Jr.Govt Advocate

For the Respondent Mr. A.S.Choudhury
Advocate.

Date of hearing & Judgment : 25/9/2006.

JUDGMENT AND ORDER(ORAL)

1. This application is filed under section 30 of the Workmen's Compensation Act 1923 challenging the legality and validity of the award dated 16.7.97 passed by the learned Commissioner, Workmen's Compensation, Dhubri in WC.27/94.

2. The claimant who was a driver under the appellants was serving under the Commandant, 9th A.P.Battalion, in the district of Bongaigaon, got several injuries due to exploitation of a Bomb causing heart to his body on his way to Bengtol seriously of the Bomb Blust. The claimant suffered by way of fractured by bones of his right leg. The Vehicle in question which was claimed to be owned by the appellants.

3. The claimant filed an application for compensation before the learned Commissioner, Workmen's Compensation, Bongaigaon under the Workmen's Compensation Act.

4. During the course of hearing, the claimant examined himself and exhibited several documents including a certificate issued by the Assistant Professor of Surgery, Gauhati Medical College- Ext.4 . The claimant apart from himself examined Dr. Niranjan Das, PW-2 on 14.6.95 vide Ext. 18. The said PW-2 stated in his deposition inter alia upon examination that the right leg of the claimant had became shorter and disabled, as a result of which he is facing difficulties to perform his own duties and if he remains same, it would be more deteriorate in future. From the appellants side no witnesses were adduced, but on the basis of the record it is submitted by Mr. P.C.Deka, learned Junior Govt. Advocate that the claimant-respondent has been retained in service by the authority by giving light work and he is getting same salary as usual. In fact the claimant-respondent in hisk deposition has also admitted that he is getting full wages.

5. Upon consideration of the available materials on record, the learned Commissioner Workmen's Compensation vide impugned order held that the loss of earning capacity of the claimant is 100% and accordingly, awarded compensation of Rs. 97,954/- to the claimant-respondent.

6. From the aforesaid discussion of the fact as disclosed above it is seen that the claimant-respondent is getting full wages which he got before

the accident and in that view of the matter there is no loss of earning capacity of the claimant-respondent as a workman. The learned Commissioner in calculating the loss of income applied the provision of Section 4(a) (3) of the Act and the maximum celling on the wages of the claimant was also limited to Rs. 1000/- only.

7. As per provisions contained before the amendment of Section 4 took place vide Act 30.1.95. The learned Commissioner upon the aforesaid consideration, by applying un-amended provision about the compensation fixing the limit of wage of Rs. 1000/-. However, no application has been made for enhancement of the compensation.

8. Mr. P.S.Deka, learned Junior Govt Advocate submits that since the claimant -respondent has been provided necessary job and getting full wages as usual i.e prior to the accident, there is no loss of income of the claimant-respondent and hence he is not entitled to get any compensation under the Act.

9. The aforesaid fact neither heard nor disclosed before the learned Commissioner. The record disclose that the claimant-respondent got permanent disasblement on his leg after the accident as a result of which he was allowed to perform light duty. In such a case, the provision applying the provision of Section 4(c) (ii) the claimant-respondent is entitled to get necessary relief which is supported by the record of the case.

10. The necessary liability clause to pay compensation by the employer disclose from Section 3 of the Wormken’s Compensation Act. The said Section 3 provides that- if a personal injury is caused to a workman by accident arising out of and in the course of his employment, his employer shall be liable to pay compensation in accordance with the provision of the Act. Section 3 does not speak and fixed about loss of income. Accordingly, the submission made by Mr P.S. Deka, learned Junior Govt. Advocate cannot be acceptable.

11. In view of the aforesaid facts and circumstances, I do not find it to be a fit case for interference with the award passed by the learned Commissioner, Workmen’s Compensation and no substantial question of law involved to be decided in this appeal. Hence, the appeal stands dismissed.